

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BRENDA BURTON,

Plaintiff,

vs.

ACCREDITED HOME LENDERS, et. al,

Defendants.

ORDER

Case No. 2:09-CV-157 (TC)

Pro se plaintiff Brenda Burton alleges various violations of state and federal statute related to the foreclosure of her home. (Docket No. 4.) Defendants have moved to dismiss Ms. Burton's Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted.

The court held a hearing on June 5, 2009, to consider all outstanding motions.¹ (Docket No. 50.)

For the reasons set forth, the court hereby ORDERS:

- (1) The case is STAYED based on the representations of counsel during the hearing that Defendant Accredited Home Lenders recently filed for bankruptcy in Delaware.

¹The hearing was originally scheduled to be an evidentiary hearing on a motion for a preliminary injunction, but Ms. Burton did not submit such a motion. The court had ordered Ms. Burton to submit a Motion for Preliminary Injunction by April 27, 2009, with any opposition to be submitted by May 11, 2009. (Docket No. 40.)

- (2) Defendants' Motion to Dismiss is DENIED without prejudice (Docket No. 44.);
- (3) Ms. Burton's Motion to Strike Defendants' Motion to Dismiss (Docket No. 48) is DENIED as moot;
- (4) Ms. Burton's Motion for Default Judgment is DENIED. (Docket No.46.)

Defendants filed a Motion to Dismiss, which is an appropriate defense for purposes of Rule 55 of the Federal Rules of Civil Procedure. See McNeil v. United States, No. 01-5007, 2001 WL 459925 *1 n.1 (10th Cir. May 2, 2001) (concluding that a "pre-answer motion to dismiss is an appropriate defense for purposes of Rule 55"); Moomchi v. Univ. of N.M., No. 95-2140, 1995 WL 736292 (10th Cir. Dec. 8, 1995) (concluding defendant had filed a defensive pleading for purposes of Rule 55, namely a motion to dismiss).
- (5) Ms. Burton is ORDERED to file any motion to bifurcate by July 6, 2009. The court encourages Ms. Burton to state things as plainly and simply as possible in any motion submitted.
- (6) Ms. Burton's Motion for a Subpoena Duces Tecum is DENIED as moot. (Docket No. 10, 11.)

DATED this 10th day of June 2009.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
Chief Judge